

## Racial Disparity in the U.S. Criminal Justice System

Today people of color continue to be disproportionately incarcerated, policed, and given a death sentence at significantly higher rates than their Caucasian counterparts in the United States. The U.S. prison population is still the world's highest, with more than 1.5 million people behind bars.<sup>4</sup> While people of color make up about 30% of the United States' population, they account for 60% of those imprisoned.<sup>1</sup>

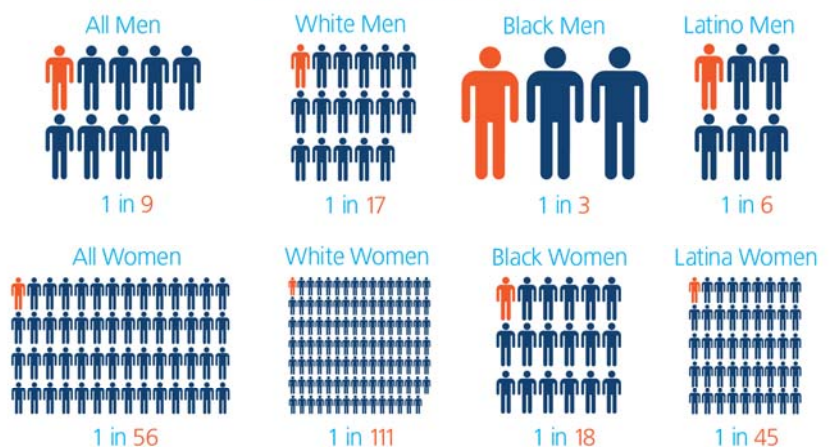
These trends have been intensified by the disproportionate impact of the "war on drugs", in which two-thirds of all persons in prison for drug offenses are people of color.<sup>7</sup> The war on drugs has been waged primarily in communities of color where people of color are more likely to receive lengthier sentences. According to the Human Rights Watch, people of color are no more likely to use or sell illegal drugs than Caucasians, but they have higher rates of arrests. African Americans comprise 14% of regular drug users but are 37% of those arrested for drug offenses. From 1980 to 2007, about one in three of the 25.4 million adults arrested for drugs in the U.S. was African American.<sup>1</sup>

### Racial Disparities for Men and Women

One in three African American men and one in six Latino men can expect to go to prison in their lifetime, as compared to 1 in 17 Caucasian men. For African American males in their thirties, 1 in every 10 is in prison or jail on any given day.<sup>7</sup>

While the number of women incarcerated is relatively low, the racial and ethnic disparities are startling. African American women are three times more likely than Caucasian women to be incarcerated, while Latina women are 69% more likely than Caucasian women to be incarcerated.<sup>1</sup>

### Lifetime Likelihood of Imprisonment<sup>7</sup>



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics



### Racial Disparities for Youth

African American students are arrested far more often than their Caucasian classmates. Data from the Department of Education shows that 96,000 students were arrested and 242,000 were referred to law enforcement by schools during the 2009-10 school year. Of those students, African American and Latino students made up more than 70% of arrested or referred students. Harsh school punishments, from suspensions to arrests, have led to high numbers of youth of color coming into contact with the juvenile justice system and at an earlier age.<sup>1</sup>

African American youth have higher rates of juvenile incarceration and are more likely to be sentenced to adult prison. Even though African American juvenile youth are about 16% of the youth population, 37% of their cases are moved to criminal court and 58% of African American youth are sent to adult prisons. Currently, African Americans make up two-fifths and Latinos make up one-fifth of confined youth today.<sup>1</sup>

## **Impact of Racial Disparities**

Once convicted, African American offenders receive longer sentences compared to Caucasian offenders. The U.S. Sentencing Commission stated that in the federal system, African American offenders receive sentences that are 10% longer than Caucasian offenders for the same crimes. African Americans are 21% more likely to receive mandatory minimum sentences than Caucasian defendants and are 20% more likely to be sentenced to prison.<sup>1</sup>

Voter laws that prohibit people with felony convictions to vote disproportionately impact men of color. An estimated 5.3 million Americans are denied the right to vote based on a past felony conviction. Nationwide, felony disenfranchisement is exaggerated by racial disparities in the criminal justice system, ultimately denying 13% of African American men the right to vote.<sup>1</sup>

Studies have shown that people of color face disparities in wage trajectory following release from prison. Evidence shows that spending time in prison affects wage trajectories with a disproportionate impact on African American men and women. The results show no evidence of racial divergence in wages prior to incarceration; however, following release from prison, wages grow at a 21% slower rate for African American former inmates compared to Caucasian ex-convicts. A number of states have bans on people with certain convictions working in domestic health-service industries such as nursing, child care, and home health care—areas in which many poor women and women of color are disproportionately concentrated.<sup>1</sup>

## **Racial Disparities in Wisconsin's Criminal Justice System**

A study from the University of Wisconsin-Milwaukee found that Wisconsin's incarceration rate for African American men was 13% - nearly double the country's rate.<sup>5</sup>

In the U.S., Wisconsin has the highest incarceration rate for African American men and the lowest graduation rate for African American youth. Wisconsin also has the highest rate of American Indian/Alaska Native men who are behind bars. One in 13 American Indian/Alaska Native men are incarcerated in the state. By contrast, Wisconsin's incarceration rate of 1.2% for Caucasian men is similar to the national average.<sup>5</sup>

The greatest increase in the number of people of color in our state's correctional facilities took place between 2000-2008 when changes to drug laws, truth-in-sentencing, mandatory sentences, and three-strikes laws were broadly imposed, and it more than tripled the incarcerated population in just a few years.<sup>4</sup>

In 2010, in Milwaukee County, nearly 1 in 8 African American men of working age had served some time in the state's correctional facilities, and more than half of all African American men in their 30s and 40s had been incarcerated at some point in their lives. Two-thirds of these men come from the six poorest zip codes in Milwaukee.<sup>4</sup>

In 2012, in Dane County, African American men made up approximately 5% of the total adult male population, however they accounted for more than 43% of all new adult prison placements during the year. African American adults were arrested in Dane County at a rate eight times that of Caucasians. That compares to an African American-Caucasian disparity of about 4 to 1 for the rest of Wisconsin and 2.5 to 1 across the country as a whole. Racial disparity begins at a young age for offenders in Dane County. In 2010, the county's African American youth arrest rate was 469 per 1,000 compared to 77 per 1,000 for Caucasians, yielding a disparity ratio of 6.1 to 1.<sup>9</sup>



## **Racial Disparities in La Crosse County’s Criminal Justice System**

In 2014, 1,992 Caucasian adults, 421 African American adults, 82 Asian adults, and 66 Native American adults were incarcerated in the La Crosse County jail.<sup>2</sup> However, African Americans make up only 1.6% of the overall population in La Crosse County, Asians make up 4.3% of the overall population, and Native Americans make up 0.4% of the overall population, while Caucasians make up 91.7% of the overall population.<sup>8</sup>

A 2014 La Crosse County Juvenile Justice Arrest and Disproportionate Minority Contact Task Force report found that juvenile arrests in La Crosse County remain higher than the nation, state, and some other like-sized counties in Wisconsin. The task force also found that Disproportionate Minority Contact is an issue in La Crosse County, as demonstrated by the table below for a comparison of juvenile disparity arrest ratios for 2010<sup>3</sup>:

	La Crosse County	Madison	WI	US
Caucasian	20.8	77.0	98.0	33.0
African American	186.6	469.0	329.0	71.0
Disparity Ratio	9.0	6.1	3.4	2.2

This table shows the juvenile arrest rates per 1,000 population for Caucasians and African Americans. In 2010, for every 1,000 Caucasian juveniles in La Crosse County, 20.8 are arrested and for every 1,000 African American juveniles in La Crosse County, 186.6 are arrested. The disparity ratio is then calculated by taking the African American arrest rate and dividing it by the Caucasian arrest rate. Results show that African American juveniles are roughly nine times more likely to be arrested than Caucasian juveniles in La Crosse County.<sup>3</sup>

## **Why are there Racial Disparities in the U.S. Criminal Justice System?**

Some people may think that racial disparities exist because people of color commit more crimes than Caucasian people, but this is not true. A series of studies conducted during the past 30 years has examined the degree to which disproportionate rates of incarceration for people of color are related to greater involvement of crime. Findings show that the weight of the evidence to date suggests that a significant proportion of the disparities is not a function of disproportionate criminal behavior.<sup>7</sup>

Other studies have shown that people of color do have a disproportionate number of encounters with law enforcement, indicating that racial profiling continues to be a problem. A report by the U.S. Department of Justice found that African Americans and Latinos were approximately three times more likely to be searched during a traffic stop than Caucasian motorists, and African Americans were twice as likely to be arrested and almost four times as likely to experience the use of force during encounters with the police.<sup>1</sup>

Unfortunately, racial bias, often times unintentional or unconscious, exists among some criminal justice professionals, such as police officers, prosecutors, judges, and other members of the courtroom work group. Their decisions and behaviors can result in racial disparities in our criminal justice system.<sup>7</sup>

Resource allocation decisions that disadvantage low-income people can also cause racial disparities. Key segments of the criminal justice system are underfunded, leading to worse outcomes for low-income defendants, who are disproportionately people of color.<sup>7</sup> Often defendants who have access to monetary resources are able to hire attorneys who will be able to negotiate a plea agreement, while people who can’t afford an attorney will more than likely end up with the felony charge and end up in prison. In Wisconsin, we are fortunate to have a strong public defender system, unlike some other states.

Sentencing and other criminal justice policies/laws that are presumably “race neutral” have in fact been seen over many years to have clear racial effects. The federal crack cocaine sentencing laws of the 1980s have received significant attention due to their highly disproportionate racial outcomes, but other policies have produced similar effects. For example, a number of states and the federal government have adopted “school zone” drug laws that penalize drug offenses that take place within a certain distance of a school more harshly than other drug crimes. Because urban areas are more densely populated than suburban or rural areas, city residents are much more likely to be within a short distance of a school than are residents of suburban or rural areas. And because African Americans are more likely to live in urban areas than are Caucasians, African Americans convicted of a drug offense are subject to harsher penalties than Caucasians committing a similar offense in a less populated area.<sup>7</sup>

## What Can Be Done to Eliminate these Racial Disparities?

These racial disparities have deprived people of color of their most basic civil rights. Through mass imprisonment and the overrepresentation of people of color within the criminal justice system, people of color have experienced an adverse impact on themselves and on their communities. Here are some steps that can be taken to eliminate racial disparities in the U.S. criminal justice system:

- Provide equal access to justice.  
Federal and state policy initiatives should promote equal access to justice. These initiatives should incorporate adequate support for defense services for people with lower incomes and provide a broader range and availability of community-based sentencing options.
- Address unintentional or unconscious racial bias among criminal justice professionals.  
Educational efforts aimed at raising awareness about unintentional or unconscious bias can help de-bias individuals. Bias and excessive use of force among police officers should be addressed; objective criteria and guidelines should be established for decision making for judges, prosecutors, and other criminal justice professionals; and potential bias among jurors should be addressed.
- Revise policies and laws with disparate racial impact.  
Current policies and laws should be analyzed, and those found to be causing racial disparities in the criminal justice system should be reviewed and revised to help reduce racial disparities. Policies designed to produce racial impact statements should be adopted by legislative action or through the internal operations of a sentencing commission in all state and federal jurisdictions. These statements would be used to assess the projected impact of new initiatives prior to their enactment.
- Shift the focus of drug policies and practice.  
The largest racial disparities in our criminal justice system are for drug offenses. State and federal policymakers should shift the focus of drug policies in ways that would be more effective in addressing substance abuse and would also reduce racial and ethnic disparities in incarceration. A more appropriate balance is needed between law enforcement strategies and demand reduction approaches emphasizing prevention and treatment.<sup>7</sup>

Locally, the findings of the study conducted by the La Crosse County Juvenile Justice Arrest and Disproportionate Minority Contact Task Force lead them to make seven recommendations, which included creating a Juvenile Justice Best Practices (JJBP) Committee, creating clear guidelines, conducting cultural competency training, increasing the use of evidence based practices, using resources for technical assistance, examining factors driving the high percentage of arrests, and identifying specific measures for partners in the juvenile justice system.<sup>3</sup> The JJBP Committee has been formed and members are working together to implement the recommendations of the task force to help eliminate racial disparities in the juvenile justice system.

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- References:
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  - <sup>2</sup>La Crosse County Justice System, 2014; [www.co.la-crosse.wi.us](http://www.co.la-crosse.wi.us)
  - <sup>3</sup>La Crosse County Juvenile Justice Arrest and Disproportionate Minority Contact Task Force: Full Report, 2014; [www.lacrossecounty.org](http://www.lacrossecounty.org)
  - <sup>4</sup>National Public Radio; Wisconsin Prisons Incarcerate Most Black Men in U.S., 2013; [www.npr.org](http://www.npr.org)
  - <sup>5</sup>Pawasarat, J. and Quinn, L.; Wisconsin's Mass Incarceration of African Males, 2013; [www4.uwm.edu](http://www4.uwm.edu)
  - <sup>6</sup>Prison Policy Initiative; Wisconsin Incarceration Rates by Race/Ethnicity, 2010; [www.prisonpolicy.org](http://www.prisonpolicy.org)
  - <sup>7</sup>The Sentencing Project; Justice for All? Challenging Racial Disparities in the Criminal Justice System, 2010; Racial Disparity, 2015; and Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System, 2015; [www.sentencingproject.org](http://www.sentencingproject.org)
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